



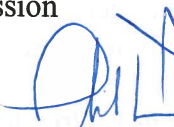
# Oregon

John A. Kitzhaber, MD, Governor

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## MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Phillip C. Ward, Director 

**SUBJECT:** Agenda Item G, August 9, 2013  
Water Resources Commission Meeting

### Director's Report

#### I. Current Events:

Current Water Conditions: As of July 2, 2013 only Northwest Oregon, the Coast, and Willamette Valley were listed by the U. S. Drought Monitor as having normal water conditions in Oregon. The rest of the state ranges from abnormally dry to severely dry in the southeast part of the state. The Governor has made drought declarations in four counties: Malheur, Gilliam, Baker, and Klamath Counties. Forecast for the next three months is for below normal to well below normal precipitation for all of Oregon, and higher than normal temperature east of the Cascades. Water conditions are considerably worse than last year. According to the U. S. Drought Monitor, approximately 1 percent of Oregon was designated as severe drought this time last year. This year 33 percent of the state is designated as severe drought.

The Natural Resource Conservation Service reports that as of July 7, 2013 total precipitation for Oregon ranges from a high of 102 percent of normal in the Hood, Sandy and Lower Deschutes Basins to a low of 79 percent of normal in the Owyhee Basin. Reservoir storage is well below normal, and in some locations there will not be sufficient storage to meet demand.

#### II. Commission Follow Up

Water Conservation, Reuse and Storage Grant Program Update: The Department received authority to spend \$750,000 of General Funds in 2013-15 to evaluate the feasibility of potential conservation, reuse or storage of Oregon's water. Funding for the grant program is now considered part of the agency's Base Budget.

The Department is preparing for its third grant solicitation and award cycle for the "SB 1069 Feasibility Study Grant Program" which began in 2008. The tentative timeline for the solicitation is a 60-70 day period beginning mid-August 2013. At the end of the solicitation, Department staff, as well as members of an application review team, will evaluate the applications for eligibility and feasibility. Public comment will then be sought in November 2013 on the selected applications. Staff will bring comments received from the public and recommendations for funding to the Commission's February 2014 meeting.

In order to effectively provide information to the general public as well as those interested in pursuing a Water Conservation, Reuse and Storage grant, the Department's website has been updated with material reflecting the current grant cycle information. And finally, because this program has been so successful, stakeholders as well as other potentially interested parties have been notified of the opportunity to apply for a grant during the 2013-15 grant cycle.

**Litigation Update: *Deborah Noble et al v. Oregon Water Resources Department, et al (Lytle), Oregon Court of Appeals***

This case was heard in Clackamas County Circuit Court and was a petition for Judicial Review of an alternate reservoir application filed on a small (1 acre foot) existing reservoir. The Nobles raised issues regarding impacts to fish resulting from the reservoir. The hearing was held the first full week of December 2010. The Judge ruled that the Department's Final Order, authorizing the issuance on the Lytle alternate reservoir, was issued in violation of statutory provision. The ruling states that the information and data contained in the application was insufficient to meet the statutory eligibility criteria. However, the Judge concluded that a reasonable person could agree with the agency's conclusions in the Final Order and permit.

Noble has appealed the ruling of the Clackamas County Circuit Court in relation to the merits of the case. The Court of Appeals is scheduled to hold oral arguments in July.

**Wolfgang Nebmaier and Vajra Ma v. Water Resources Department and others**

This case involves Judicial Review of a Final Order in a Contested Case. The contested case was the result of the Department's receiving affidavits alleging forfeiture of water rights. The water use included domestic use and irrigation of 0.6 acre. The contested case resulted in a finding that the portions of the water rights in question had been forfeited. Nebmaier and Vajra Ma filed Exceptions with the Commission. The Commission denied the Exceptions. On June 27, 2012, the Court of Appeals affirmed the case without Opinion. The Court denied a request filed by Nebmaier for reconsideration.

The Oregon Supreme Court has once again denied to reconsider. The Department is waiting to see if another request for reconsideration will be submitted.

**WaterWatch v. Oregon Water Resources Department (City of Cottage Grove)**

The City of Cottage Grove filed an application to extend a water right permit issued in its name. WaterWatch protested the order approving the extension of time. Following a Contested Case Hearing the Department issued a Final Order granting the extension to the City.

WaterWatch filed a petition with the Oregon Court of Appeals for Judicial Review of the Order issued in a contested case. The Court of Appeals heard oral argument on September 10, 2012. The Department is now waiting for a ruling from the court.

**WaterWatch v. Oregon Water Resources Department (Lower Clackamas Water Districts)**

This case stems from several applications for extensions of time. It involves several water districts that divert water from the lower portion of the Clackamas River. WaterWatch protested the approval of the various extensions of time. Since the issues were similar, the eight cases were consolidated into a single contested case. Following the contested case hearing, the Department issued orders approving the extensions of time. WaterWatch filed three petitions for Judicial Review with the Oregon Court of Appeals. Department staff prepared and filed the record with the Court of Appeals. To date, the Court has not scheduled a date and time for oral argument.

**State of Oregon v. Gary Harrington (Jackson County Circuit Court)**

On July 11, 2012, a Jackson County Circuit Court Jury convicted Harrington on nine counts, each related to the unauthorized use of water. Harrington has stored and used water illegally by placing dams across channels on his property and preventing the flow of water out of these artificial reservoirs without obtaining a water right permit. The height of each dam varies; two dams stand about ten feet tall and the third stands about 20 feet tall. The total amount of water collected behind these dams totals about 40 acre feet. The watermaster first identified Harrington's illegal water use more than ten years ago and initiated enforcement action to discontinue his illegal use of water.

The Court sentenced Mr. Harrington to 30 days in jail and three years' probation, and imposed a \$1,500 fine. He was ordered to open the headgates and to keep them open. The Judge also ordered the dams to be breached after the water is drained. However, water continues to be stored. Mr. Harrington was sentenced to additional time in jail for the continued storage of water. The Department is awaiting a Judgment from the Court on this continuing violation.

**Farm of the Family Recreation Association v. Water Resources Department and others**

This case is the most recent in a series of legal actions over the past decade concerning Gary Harrington and the storing of water without a water right. The Farm of the Family Recreation Association alleges it acquired, from Gary Harrington, the property where the three reservoirs are located. The Association argues therefore, that Gary Harrington is not authorized to drain or breach the dams. This matter is before the Jackson County Circuit Court. A ruling is pending.

<b>III. Commission/Board Schedules</b>	<b>Location</b>	<b>Date</b>
State Land Board	Salem	August 13, 2013
Environmental Quality Commission	TBD	August 21-22, 2013
Board of Forestry	Salem	September 4, 2013
Fish and Wildlife Commission	Medford	September 4-6, 2013
Oregon Watershed Enhancement Board	Burns	September 10 - 11, 2013
Board of Agriculture	Salem	September 17-19, 2013
Parks and Recreation Commission	Condon	September 25, 2013
Land Conservation and Development Commission	Salem	September 26 - 27, 2013
Water Resources Commission	Salem	November 14 -15, 2013
Dept. of Geology and Mineral Industries	TBA	TBA